

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

1. On August 12, 1998, Mr. Blue injured his right leg, hip, knee and low back when he stepped into a hole while working for LSC, a lawn sprinkler company.
2. Orthopedic surgeon Anthony G. A. Pollock, M.D., provided authorized medical treatment to Mr. Blue. But that treatment was primarily focused upon his right knee. Although the doctor diagnosed an exacerbation of degenerative disc disease at the L4-5 and L5-S1 intervertebral spaces, Dr. Pollock provided little, if any, treatment for Mr. Blue's low back. In his office notes dated May 10, 1999, Dr. Pollock records that Mr. Blue was experiencing a constant lower backache, which had existed since his accident.
3. After recovering from knee surgery, Mr. Blue moved to Colorado and began working in the shipping and receiving department of Rocky Mountain Motor Works, where he was working when LSC and its insurance carrier requested that he be evaluated by Katharine J. Leppard, M.D., a Colorado Springs, Colorado, physician who is board certified in physical medicine and rehabilitation and pain medicine.
4. In the report dated July 26, 1999, entitled Independent Medical Examination, Dr. Leppard notes that Mr. Blue's medical treatment for the August 1998 accident had been primarily directed to the right knee. As a result of her evaluation, Dr. Leppard diagnosed a herniated L5-S1 disc and noted that Mr. Blue might benefit from additional medical treatment. Further, the doctor wrote that Mr. Blue had not reached maximum medical improvement from the low back injury.
5. The Judge found that Mr. Blue was entitled to receive additional medical and temporary total disability benefits for the back injury and the Appeals Board agrees. Although it is true that Mr. Blue found and performed work in Colorado, he had received little, if any, medical treatment for the back injury that he sustained while working for LSC.

CONCLUSIONS OF LAW

1. The preliminary hearing Order should be affirmed.
2. Mr. Blue sustained personal injury by accident arising out of and in the course of his employment with LSC on August 12, 1998. In that accident, Mr. Blue injured his low back and right knee. The Board concludes that it is more probably true than not that Mr. Blue's present low back complaints are directly related to the August 12, 1998 accident. From the present record, Mr. Blue's low back complaints have been ongoing since the accident but his back injury has not been treated. At this juncture, the record fails to prove that Mr. Blue has sustained additional back injury while working for the Colorado motor company.

3. Based on the evidence submitted to date, the Appeals Board agrees with the Judge that LSC and its insurance carrier should be responsible for additional preliminary hearing benefits.

WHEREFORE, the Appeals Board affirms the October 1, 1999 preliminary hearing Order entered by Judge Frobish.

IT IS SO ORDERED.

Dated this ____ day of December 1999.

BOARD MEMBER

c: Phillip B. Slape, Wichita, KS
William L. Townsley III, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director